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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B5

DATE:

OFFICE: TEXAS SERVICE CENTER

IN RE: **FEB 27 2012**
Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal as untimely filed. The AAO will return the matter to the director for consideration as a motion to reopen and reconsider.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) requires that the affected party or the attorney or representative of record must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the petitioner must file the appeal within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the service center director issued the decision on September 29, 2009. The service center director properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit. The director informed the petitioner of her appeal rights, and advised: **"The appeal may not be filed directly with the Administrative Appeals Office. The appeal must be filed at the address at the top of this page,"** i.e., the Texas Service Center (emphasis in original).

Despite the director's instructions (repeated on the instructions to the Form I-290B Notice of Appeal), the petitioner sent the appeal directly to the AAO, which received the appeal on October 29, 2009. The AAO returned the improperly filed appeal. The petitioner then sent the appeal to the Texas Service Center, which received it on November 12, 2009, 45 days after the director issued the decision. Accordingly, the appeal was untimely filed.

In a letter dated November 5, 2009, the petitioner acknowledged having sent the appeal directly to the AAO, "contrary to [the director's] instructions," but asserted that she "did submit the Appeal on time." Every appeal must be filed at the location specified in the instructions on the form. *See* 8 C.F.R. § 103.2(a)(1).

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director of the Texas Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The AAO will therefore return the matter to the director. If the director determines that the late appeal meets the requirements of a motion, the director shall grant the motion and issue a new decision.

Because the appeal was untimely filed, the AAO must reject the appeal.

ORDER: The appeal is rejected.